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Before the  
**Federal Communications Commission**  
 Washington, D.C. 20554

**RECEIVED****FEB 2 2001**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 Amendment of Section 73.202(b), )  
 Table of Allotments, )  
 FM Broadcasting Stations. ) RM-\_\_\_\_\_  
 (Macon, Mississippi) )

To: Chief, Allocations Branch

**PETITION FOR RULE MAKING**

Radio South, Inc. ("Radio South"), licensee of Station WLXY(FM), Northport, Alabama, by its attorney, submits this Petition for Rule Making requesting that the Chief of the Allocations Branch amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules by deleting the allotment of Channel 263A at Macon, Mississippi. As we shall demonstrate, the history of Channel 263A in Macon demonstrates a pervasive lack of meaningful interest in developing an FM broadcast station in that community. Deletion of the allotment will further the Commission's mandate, set forth in Section 307(b) of the Communications Act, favoring the efficient use of spectrum and will permit the Mass Media Bureau to complete the processing of Radio South's pending application for a minor change in facilities for Station WLXY.<sup>1/</sup>

<sup>1/</sup> On October 12, 1999, Radio South filed a minor change application to relocate and make other changes in the facilities for the Station. (File No. BPH-19991012AAG).

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**Background: The History of a Frequency Lain Fallow**

From the inception of the Channel 263A Macon allotment almost 15 years ago, the frequency has lain fallow – unused without interruption – notwithstanding ostensible expressions of interest by three parties.

As an initial matter, the Channel 263A allotment at Macon, Mississippi was not part of the Commission's original allotment scheme. Rather, the channel was first allotted to Macon in 1986 at the request of Double 'H' Broadcasting Company.<sup>2/</sup> Significantly, although an application for Channel 263A was subsequently granted on March 2, 1987, the construction permit issued to WMXG, Inc. (File No. BPH-890531JJ) remained unbuilt. Ultimately, the construction permit for Station WMXG(FM) was forfeited and canceled by letter on June 23, 1992. Underscoring its lack of interest in the facility, WMXG, Inc., did not even seek reconsideration of the cancellation.<sup>3/</sup>

Shortly thereafter, Radio South's predecessor-in-interest as licensee of WLXY(FM) – Warrior Broadcasting, Inc. – submitted a Petition for Rule Making that requested the substitution of Channel 264C3 for Channel 264A at Northport and the modification of its license accordingly to specify operation on the higher powered channel. In order to accommodate the proposal in conformity with minimum distance separation requirements, Warrior requested the deletion of vacant Channel 263A at Macon or alternatively, the placement of a site restriction on the Macon

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<sup>2/</sup> *In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Report and Order in MM Docket No. 85-263 RM-4957, 1986 FCC LEXIS 3188 (MMB, Allocations Branch, 1986), 51 Fed. Reg. 23763 (July 1, 1986).

<sup>3/</sup> Accordingly, the Commission's action became final on July 23, 1992.

allotment.<sup>4/</sup> In that Notice, the Allocations Branch stated that, “We will delete the Macon channel if no expression of interest in retaining the channel is filed.”<sup>5/</sup> In the subsequent Report and Order in that proceeding released on March 25, 1993,<sup>6/</sup> the Allocations Branch observed that no expressions of interest advocating retention of Channel 263A at Macon, Mississippi, were received in response to the Notice and accordingly, it deleted the allotment.<sup>7/</sup>

Following the deletion of Channel 263A, the Macon market remained dormant for over four years. In 1997, however, a Petition for Rule Making was filed by Team Broadcasting Company, Inc. requesting the allotment of Channel 244A to Macon, in response to which, the Allocations Branch issued yet another Notice of Proposed Rule Making.<sup>8/</sup> Subsequent to the issuance of the Notice, but prior to the adoption of the Report and Order in that proceeding, Team Broadcasting, Inc., the proponent, filed a “Request to Dismiss Petition for Rulemaking,” in which it withdrew its earlier expression of interest in the proposed Macon allotment. However, in addition to Team Broadcasting’s filing, Metro Radio, Inc., on October 17, 1997, had also

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<sup>4/</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Northport, Alabama and Macon, Mississippi)*, Notice of Proposed Rule Making in MM Docket No. 92-225, RM-8073, 7 FCC Rcd. 6376 (MMB, Allocations Branch, 1992).

<sup>5/</sup> *Id.* at 6376.

<sup>6/</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Northport, Alabama and Macon, Mississippi)*, Report and Order in MM Docket No. 92-225, RM-8073, 8 FCC Rcd. 2161 (MMB, Allocations Branch, 1993).

<sup>7/</sup> As a consequence of the deletion of Channel 263A at Macon, the Commission was able to allot Channel 264C3 to Northport, Alabama, for use by Station WLXY(FM).

<sup>8/</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Notice of Proposed Rule Making in MM Docket No. 97-188, RM-9137, 12 FCC Rcd. 23 (MMB, Allocations Branch, 1997).

submitted comments supporting the proposed allotment and another party, Colon Johnston, proffered a counterproposal that requested the allotment of Channel 244C2 at Walnut Grove, Mississippi.

In a Report and Order released on May 1, 1998,<sup>9/</sup> the Allocations Branch at the outset acknowledged the existence of a short-spacing problem that prevented the allotment of the requested channel (Channel 244A).<sup>10/</sup> However, taking note of “the interest expressed by Metro Radio,” the Branch decided to it would allot an FM channel to Macon and, in lieu of Channel 244A, it once again allotted Channel 263A – the very same channel that had been deleted more than five years earlier because of its short-spacing conflict with WLXY(FM)’s Channel 264C3 at Northport, Alabama.<sup>11/</sup> In making this allotment, the Report and Order also rejected Colon Johnston’s counterproposal. Johnston filed a timely Petition for Reconsideration of the above-noted Report and Order asking the Policy and Rules Division to reverse the Allocations Branch’s decision to reject the Walnut Grove counterproposal.

Subsequently, during the pendency of Johnston’s petition, on September 30, 1999, Metro Radio filed a pleading, captioned “Withdrawal of Expression of Interest and Petition for Deletion

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<sup>2</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Report and Order in MM Docket No. 97-188, RM-9137, DA 98-812, 13 FCC Rcd. 11061 (MMB, Allocations Branch, 1998).

<sup>10/</sup> *Id.* at 11061. Specifically, Channel 244A would have been short-spaced with a pending one-step upgrade application filed by Station WKXK(FM) for Channel 244C2 at Pine Hill, Alabama (File No. BPH-970625IC).

<sup>11/</sup> *Id.* Although the Allocations Branch applied a site restriction to the new allotment of Channel 263A that addressed the short-spacing conflict with WLXY’s existing facilities, that site restriction was not sufficient to permit the upgrade of facilities proposed in WLXY’s pending minor change application.

of Allotment," in which it withdrew its expression of interest and observed that "since the original proponent [Team Broadcasting] also has withdrawn its expression of interest in the allotment, it is clear that there is no party with any ongoing interest in the Macon allotment."<sup>12/</sup> Metro Radio also requested that the Commission delete the allotment of Channel 263A at Macon.<sup>13/</sup>

In Comments filed on October 10, 2000, Radio South referred to the Withdrawal of Expression of Interest and Petition for Deletion of Allotment filed by Metro Radio. Radio South supported the deletion of this allotment from the FM Table of Allotments and removal from the FM Broadcast Auction Public Notice released on September 25, 2000. Radio South also pointed out that this deletion of the Channel 263A allotment at Macon would remove a conflict with its one-step application to upgrade Station WLXY to specify operation on Channel 263C1 (File No. BPH-19991012AAG).

In a Memorandum Opinion and Order released on January 26, 2001 (DA01-185), the Chief of the Allocations Branch allotted Channel 244C2 to Walnut Grove but decided not to delete the Channel 263A allotment at Macon, or otherwise set aside the Branch's action allotting this channel on the basis of the Metro Radio pleading which it noted was filed 16 months after the release of the Report and Order. The Memorandum Opinion and Order states that the appropriate procedure would be for either Radio South or Metro Radio to file a petition for rule making requesting deletion of this allotment and setting forth the public interest reasons for the

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<sup>12/</sup> Withdrawal of Expression of Interest, and Petition for Deletion of Allotment filed September 30, 1999, by Metro Radio, Inc., in MM Docket No. 97-188, RM-9137, at 2.

<sup>13/</sup> *Id.*

deletion. Such an approach affords interested parties the opportunity to comment on the proposed deletion.

**The Public Interest Benefits of Deletion of the Macon Allotment**

First and foremost, maintenance of the allotment will not foster the fundamental and longstanding policy, set forth in Section 307(b) of the Communications Act, favoring the efficient use of the radio spectrum. Section 307(b) charges the Commission, in making allocations of radio facilities, to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” As the history of Channel 263A in Macon demonstrates, preserving the allotment would manifestly undermine this important policy goal. It certainly would not be “efficient” from a spectrum usage standpoint to maintain an allotment that has never been, and clearly will never be, used for its intended purpose.

The inefficiency is aggravated by the unfair and inequitable impact that the allotment has on the nearby community of Northport. Radio South’s Station WLXY is Northport’s only local aural service. Because the errant allotment in Macon creates a short-spacing problem for WLXY’s pending upgrade, preservation of the allotment in the interest of an illusory first local service in Macon comes at the expense of a bona fide improvement in an operating first local service for the residents of Northport. Such a result plainly contravenes the public interest.

**The Availability of an Alternate Channel at Macon**

As noted above, in 1993, the Allocations Branch previously deleted an allotment of Channel 263A from Macon because of the demonstrated lack of interest in developing the channel in that community and because of the need to accommodate Station WLXY's ability to

upgrade its service to the citizens of Northport. Such action should be taken once again.

However, assuming, arguendo, that the Chief of the Allocations Branch were to conclude that an FM allotment at Macon would serve the public interest or if an expression of interest to file another Class A channel to an application for Macon were to be submitted in this proceeding, the allotment of Macon should be considered.

As shown in the attached Technical Statement of Jefferson G. Brock, Radio South's consulting engineer, Channel 249A can be allotted to Macon at geographic coordinates North Latitude 33° 05' 40" and West Longitude 88° 31' 40". This location has a site restriction of 4.4 kilometers southeast of the community to avoid shortspacing Station WWMS, Channel 248C1, Oxford, Mississippi. As demonstrated in the Technical Statement, Channel 249A at the proposed allocation reference site meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities. Moreover, a maximum Class A facility, operating from the reference site, will deliver a 3.16 mV/m contour over Macon. From the proposed reference site, a maximum Class A station would provide 60 dBu service to 16,016 persons in 2,498.3 square kilometers.

In the event that the Chief of the Allocations Branch were to decide against deleting an FM allotment at Macon, Radio South proposes the following amendment to Section 73.202(b) of the Commission's rules.

**Macon, Mississippi**

Present

263A

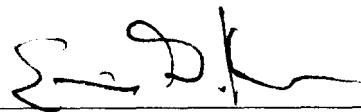
Proposed

249A

WHEREFORE, for the foregoing reasons, Radio South, Inc. respectfully requests that the FM Table of Allotments, Section 73.202(b) of the Commission's rules be amended by deleting the allotment of Channel 263A at Macon, Mississippi.

Respectfully submitted,

**RADIO SOUTH, INC.**

By   
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Its Attorney

February 2, 2001



**CERTIFICATE OF SERVICE**

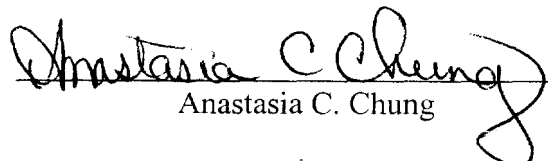
This is to certify that I, Anastasia C. Chung, have filed the foregoing Petition for Rule Making with the Federal Communications Commission on this 2<sup>nd</sup> day of February, 2001, and that a copy has been served by way of U.S. mail, postage pre-paid, upon:

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\* By Hand